

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,  
  
Plaintiff,

-vs-

Case No. 7:20-CR-167-M-3

JORDAN DUNCAN,  
  
Defendant.

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MOTION HEARING  
JANUARY 15, 2021  
THE HONORABLE CHIEF JUDGE RICHARD E. MYERS II  
UNITED STATES DISTRICT JUDGE

**A P P E A R A N C E S**

On Behalf of the Government

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On Behalf of the Defendant

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Risa Kramer, RMR, CRR  
Official Court Reporter  
United States District Court  
Wilmington, North Carolina

1                   TRANSCRIPT OF PROCEEDINGS

2                   (Proceedings commenced at 9:57 a.m.)

3                   THE COURT:   If the clerk would please call  
4                   the case.

5                   THE CLERK:   USA versus Jordan Duncan.

6                   THE COURT:   Counsel, please state your  
7                   appearance for the record.

8                   MR. TARLTON:   Yeah.   Yes, Your Honor.  
9                   Raymond Tarlton on behalf of Mr. Duncan.

10                  MS. KOCHER:   And Barbara Kocher, sir, on  
11                  behalf of the United States.

12                  THE COURT:   All right.   Good morning,  
13                  counsel.   Good morning, Mr. Duncan.

14                  THE DEFENDANT:   Good morning.

15                  THE COURT:   We're here on the defendant's  
16                  appeal of the order of detention from Magistrate Judge  
17                  Gates.   The Court has read the transcript of the prior  
18                  detention hearing and the motions -- or papers in the  
19                  case.   I've also seen Judge Gates's order and read the  
20                  pretrial services report that was included on the  
21                  docket.   Are there any other new written materials that  
22                  I should be aware of at this point?

23                  MS. KOCHER:   Your Honor, I did have one very  
24                  small exhibit that I could add to the record at this  
25                  point.

1           THE COURT: All right. And the Court has  
2 not seen the exhibits. So if we have copies of the  
3 exhibits, that would also be helpful, but I'm assuming  
4 that this -- this is a de novo hearing. To the extent  
5 that the parties wish to rely on information previously  
6 submitted or testimony that has previously been adduced,  
7 I'm happy to do that. To the extent that the parties  
8 wish to put new testimony in, I'm also happy to do that.  
9 I will leave it to counsel to decide how best to put in  
10 the evidence in a way that is useful to them,  
11 expeditious, and they believe will be helpful to the  
12 Court.

13           MS. KOCHER: Your Honor, in the main, the  
14 government would be relying on the substantial evidence  
15 submitted at the hearing. I do have a copy of each of  
16 those exhibits if you would like for me to hand those up  
17 at this point.

18           THE COURT: Yes. That would be great.  
19 Thank you.

20           MS. KOCHER: Thank you. I do apologize.  
21 They're not necessarily stapled or collated in any way.  
22 If I may approach, sir.

23           THE COURT: Thank you so much.

24           MS. KOCHER: I would note, Your Honor, as to  
25 Government's Exhibit 6 therein, what I've handed up to

1     you -- actually, if I can switch -- what I handed up to  
2     you is the redacted version that's in the public record.  
3     If the Court -- it's unimportant. It's the redaction of  
4     a juvenile's name, so it's not --

5                 THE COURT: That's not essential to the  
6     Court.

7                 MS. KOCHER: All right. Thank you, sir.

8                 The only evidence that the government would  
9     be interested in submitting today are a few additional  
10    pages to what the Court now has in front of it as  
11    Government's Exhibit 6, which was a series of Instagram  
12    messages back and forth between this defendant,  
13    Mr. Duncan, and co-defendant Paul Kryscuk. There are a  
14    few more pages that -- as events have transpired within  
15    the last ten days -- that would be significant for the  
16    Court's consideration. If I may approach with a copy --

17                THE COURT: Have those been provided to  
18    defense counsel?

19                MS. KOCHER: Yes, sir. Actually, discovery  
20    has been fully provided, but I do also have a copy for  
21    him this morning.

22                THE COURT: Okay.

23                MR. TARLTON: Thank you, Your Honor.

24                MS. KOCHER: I have labeled this Government  
25    Exhibit 1 only because it's coming new into this

1 proceeding.

2 THE COURT: Okay.

3 MS. KOCHER: And if I can just point out to  
4 the Court by proffer, again, I note that Government's  
5 Exhibit 6 that had come in at the earlier hearing was  
6 the series of Instagram records. It was a very  
7 extensive record, and the government had just put in  
8 various pages for the Court's consideration. These are  
9 a few additional pages. I would note that the page  
10 numbers -- that is, the blue banner at the top -- don't  
11 necessarily follow Government's Exhibit 6 from the  
12 previous hearing, but they are in fact part of the same  
13 disclosure.

14 I would first note to the Court the second  
15 page of the current Government Exhibit 1. The exchanges  
16 are between what is noted as author JCD -- that would be  
17 this defendant, Mr. Duncan -- and Slim Reaper, Slim  
18 Reaper being the user identity by Mr. Kryscuk, the  
19 co-conspirator and co-defendant in this case.

20 I first call your attention to the bottom  
21 third of that page -- again, the blue banner at the top  
22 says page 436 -- with a reference to the Hilux Hornet.  
23 That is, for Your Honor's information, similar to an  
24 open-bodied Hummer. It is a Toyota vehicle on the  
25 Tacoma platform. Here in the United States, it is the

1 Hilux Hornet. It is used by Special Forces, most  
2 commonly known in the context of ISIS. It does have a  
3 mounted machine gun on the top of it. Mr. Duncan posts  
4 what appears to be a reference to the Hilux Hornet. I  
5 note that Mr. Kryscuk responds with some urban slang,  
6 and I would call that to the Court's attention. He  
7 says: *I just "coomed."* That would be a statement  
8 referencing ecstasy, Your Honor, or an orgasm. It  
9 becomes important for later in the point.

10 Turning to the next page, page 437,  
11 Mr. Kryscuk responds: *SF ZOG nerds don't be deserving*  
12 *that shit.* This is in respect to that Toyota Hilux.  
13 The SF would be reference to Special Forces. ZOG would  
14 be the ZIOG occupied government, or the anti-Semitic  
15 conspiracy theory about the United States government.  
16 They go on. All of this is -- conversations are  
17 happening on August 8th.

18 There is a message that's unavailable right  
19 there at the beginning of the page. We don't know what  
20 Kryscuk posted, but what he responded to his own post  
21 was: *You have no idea how much I hope this happens.*  
22 Duncan responds: *That's pretty much happening,* and asks  
23 Kryscuk: *You saw the footage of the arrest they*  
24 *released?*

25 Now, on this day in history, Your Honor, on

1 August 8th, the judge ordered the release of the body  
2 cam footage of the death of George Floyd.

3 They go on to say: *He's -- and so the*  
4 *government assumes they're discussing Mr. Floyd -- like*  
5 *demonically strung out on meth and fentanyl. Those cops*  
6 *are getting acquitted, Mr. Duncan says, and if they*  
7 *don't it's judicial activism.*

8 Kryscuk says: *Imagine they get sentenced*  
9 *and Trump pardons them. Mr. Duncan responds: Ideal*  
10 *scenario, and follows with: Combined with Trump losing*  
11 *the election, then refusing the results. Again, Kryscuk*  
12 *responds: I "coom."*

13 It is significant, Your Honor. I would note  
14 that Judge Gates did not say it in these exact words  
15 during Mr. Duncan's hearing, but in a co-defendant's  
16 hearing -- in regard to Mr. Collins' detention hearing,  
17 the argument was being made that there was no imminent  
18 threat by these persons. And Judge Gates noted that the  
19 plan and strategy are there, they're just waiting on the  
20 trigger. The events of last week do have that trigger  
21 mechanism in place.

22 I move on to what is marked as page 614 in  
23 the blue banner. This follows -- the previous two pages  
24 are discussions about different types of firearms. At  
25 page 614, Kryscuk asks Duncan: *The primary question I*

1     *struggle with is do we strike now or wait until it gets*  
2     *that bad? And again, it's some text or photo that we do*  
3     *not have access to that they're referring to.*

4     Mr. Duncan says: *Wait until it gets bad*, and points out  
5     that they aren't an army, *we don't gain anything by*  
6     *blowing our load before it even matters*, to which  
7     Kryscuk responds: *An army will rise when that starts*  
8     *happening.*

9                     Your Honor, that would be the additional  
10    evidence on behalf of the government today.

11                    THE COURT: Is there any significance to the  
12    material on 615? Or is that just included to...

13                    MS. KOCHER: I did -- I do tend to include  
14    the page before and after, just so that...

15                    THE COURT: For context.

16                    MS. KOCHER: Context.

17                    I do know, Your Honor, that the reference at  
18    page 615 right below -- do you have a copy of the cap  
19    schedule?

20                    THE COURT: Mm-hmm.

21                    MS. KOCHER: Is -- when you follow that link  
22    on Instagram, that is what -- entitled something to the  
23    effect of "What happens to your cell phone when you're  
24    arrested." And it lays out the law enforcement platform  
25    that is used to access phones, to download phones, the



1 UFED software. So the significance would be that they  
2 had an expectation and were preparing in the event of  
3 arrest and preparing their items for the ultimate  
4 download of their phones, would be the government's  
5 argument in that regard. But that is what that  
6 references.

7 THE COURT: Counsel, can you tell me what  
8 I'm looking at in Exhibits 3 and 3-2? One is a Colorado  
9 driver's license, name of Logan Grady. The other is a  
10 Colorado driver's license, name of James Tyler Callahan.

11 MS. KOCHER: Yes, Your Honor. Each of the  
12 defendants was found to have possession of a false  
13 identification. The one for defendant Kryscuk was known  
14 to law enforcement before the arrest and searches  
15 because he had been using it to ship the manufactured  
16 weapons to the various places around the country.

17 The one in regard to Mr. Grady there, that  
18 is defendant Liam Collins. That was found at his family  
19 home in Rhode Island.

20 Mr. Callahan is this defendant, Your Honor,  
21 Mr. Duncan. Mr. Duncan's false identification was found  
22 within an official government travel passport at his  
23 apartment in Boise.

24 THE COURT: And I think Judge Gates asked  
25 the question -- do we have an answer to the question of

1 whether or not -- actually, I think defense counsel  
2 asked the question. Do we have an answer to the  
3 question of whether or not they explicitly requested the  
4 return of the official passport? I'm assuming that  
5 that's not a U.S. state department issued passport,  
6 that's a DOD issued passport?

7 MS. KOCHER: That is correct, Your Honor.  
8 And if I can have just a moment.

9 (Discussion off the record between  
10 Ms. Kocher and the agent.)

11 MS. KOCHER: So I don't have specific  
12 information that Mr. Duncan was asked only --

13 THE COURT: Pattern and practice would have  
14 been --

15 MS. KOCHER: -- by pattern and practice --  
16 correct.

17 THE COURT: And Exhibit 4, whose telephone  
18 is that?

19 MS. KOCHER: Your Honor, I will admit I gave  
20 you my own copies.

21 THE COURT: Okay.

22 It's a gear list. It has "chest rig, belt,  
23 new optic," et cetera. It looks like it's in Notes,  
24 which -- I'm not sure if this is -- I'm assuming this is  
25 not an iPhone, but it's the iPhone equivalent of Notes.

1 MS. KOCHER: So screen shots of Wire do also  
2 have that look to it. There are two places where that  
3 could come from. One of the lists was recovered from --  
4 juvenile involved at the time.

5 THE COURT: Okay.

6 MS. KOCHER: And my sense is that that's  
7 what you're looking at. We do have another list that's  
8 actually even longer and greater from Mr. Duncan's Notes  
9 section of his phone. I just don't think that that one  
10 is it. But the one that was found in Mr. Duncan's Notes  
11 section on his phone was actually more complete.

12 THE COURT: And do we know if that list was  
13 compiled before the training exercise in Idaho?

14 MS. KOCHER: I'm unable to answer that  
15 question, Your Honor. I do know overall that the  
16 chatter on Instagram, the -- from, that is -- from the  
17 messages that we've been able to see, that that training  
18 event in July seriously ratcheted up their talk and  
19 their excitement about their plan. It was after that  
20 that Mr. Duncan switched jobs, took a pay cut, and moved  
21 to Boise. A lot of the messages from the government's  
22 prior Exhibit 6 indicate the work that they're gonna  
23 have to undertake once Mr. Duncan gets to Boise.

24 So I don't know when the list would have  
25 been made, but it is consistent -- it would seem

1 consistent to me if it came after that, once they had  
2 practiced, once they had that going, and once the  
3 excitement level had ratcheted up in regard to their  
4 strategy and plan.

5 THE COURT: Exhibit 6 is...

6 MS. KOCHER: Those are the Instagram --  
7 pages from the Instagram record of messages between  
8 Mr. Duncan and Mr. Kryscuk.

9 THE COURT: So this photograph is -- the  
10 "Don't do this," do we know who that is and who took the  
11 photograph or where it's from?

12 MS. KOCHER: We don't -- we would call that  
13 a meme, I suspect.

14 THE COURT: Okay.

15 MS. KOCHER: Or that they were just sharing  
16 that idea. Now, there was, as you can see from another  
17 exhibit there in front of you, that there was a list of  
18 locations found that made reference to -- it literally  
19 was just a list of locations, what we submitted at the  
20 detention hearing, some of the street view shots of  
21 those locations, and confirmed that each one of them had  
22 something to do with either the power grid or a fuel  
23 depot.

24 THE COURT: And the "Don't step on my  
25 hustle" meme is a fake -- somebody faking green-tipped

1 ammunition.

2 And I'm assuming that this lengthy Instagram  
3 chat, the stuff that was called out as specifically  
4 important to Judge Gates is the stuff you want the Court  
5 to concentrate on.

6 MS. KOCHER: Yes, sir.

7 And, Your Honor, I do have Exhibit 7, a  
8 video queued up. It's, I think, less than three minutes  
9 long, if you would be interested in viewing --

10 THE COURT: Yeah, let's go ahead and -- I'll  
11 watch that.

12 MS. KOCHER: All right. Thank you, sir.

13 (An exhibit was played.)

14 MS. KOCHER: This is Mr. Duncan on the  
15 right, sir.

16 (The exhibit continued playing.)

17 THE COURT: There was reference in the  
18 earlier testimony to short-barreled rifles. Do we know  
19 those are short-barreled rifles as opposed to AR  
20 pistols, and have those been recovered?

21 MS. KOCHER: They are, in fact, short-barrel  
22 rifles, Your Honor, and yes, they were recovered.

23 THE COURT: Okay. And the other question I  
24 have -- sort of factual question. Is the pallet that  
25 was shipped, the one that contained the body armor, it's

1     unclear from the testimony, but it appears that it was  
2     Collins' pallet and being shipped to Collins' address  
3     where this defendant also lived.

4             MS. KOCHER:   That's correct, Your Honor.

5             THE COURT:   Was it addressed to Collins?

6             MS. KOCHER:   It was addressed to Collins.

7             THE COURT:   Okay.   Any additional evidence,  
8     Mr. Tarlton, for the defendant?

9             MR. TARLTON:   Your Honor, I would like to  
10    present on the screen what have been admitted in Liam  
11    Collins's detention hearing as exhibits -- there were 18  
12    exhibits.   I think it's docket entry 62.   But my  
13    understanding is it was submitted to Magistrate Judge  
14    Gates in notebook form, and I have electronic copies I  
15    could put on the screen, and then...

16            THE COURT:   That's fine.

17            MR. TARLTON:   Thank you, Your Honor.

18            THE COURT:   I'm sorry, Ms. Kocher.   I may  
19    have cut you off.   I'd asked earlier if that was all the  
20    additional evidence you have.   Do you have any  
21    additional evidence?

22            MS. KOCHER:   No, Your Honor.

23            THE COURT:   Okay.   Thank you.

24            MR. TARLTON:   Your Honor, by just way of  
25    background, Mr. Collins had his detention hearing after

1 Mr. Duncan had his, and so the discovery -- first  
2 discovery production occurred after our detention  
3 hearing. So Mr. Collins' counsel was able to go through  
4 some of the discovery production and identify documents  
5 having bearing on the points that both I've made for  
6 Mr. Duncan as well as he was making for Mr. Collins,  
7 that there was a lack of evidence as to imminent  
8 likelihood of violence under the Brandenburg and Hess v.  
9 Indiana doctrines. And that's, sort of, the context for  
10 this.

11 Your Honor, this is a FBI investigative  
12 report focusing on Mr. Collins, and it discusses the --  
13 sort of, the origins of it based on a Newsweek  
14 publication where, I guess, Mr. Collins was identified  
15 as holding racist and, you know, right-wing ideology. I  
16 want to go down to a highlighted portion.

17 They highlighted that no imminent threat was  
18 identified at the time that they initiated -- conducted  
19 initial stages of this investigation, Your Honor.

20 MS. KOCHER: Could you -- could you --

21 THE COURT: What's our date?

22 MS. KOCHER: -- just say which exhibit that  
23 is, if you would?

24 MR. TARLTON: Your Honor?

25 THE COURT: This was -- so we'll mark this

1 as Defense Exhibit 1 for purposes of this hearing.

2 MR. TARLTON: Yes, Your Honor.

3 THE COURT: And it's docket entry 62 in  
4 the...

5 MR. TARLTON: It's a part of docket entry  
6 62. I think that was an exhibit list.

7 And it looks like the date of this  
8 memorandum or investigative report was back in May of  
9 last year, Your Honor, while Mr. Collins was still in  
10 the Marines.

11 Your Honor, Exhibit 2 I'm about to put on  
12 the screen is what -- you've probably seen in the Iron  
13 -- what's called Iron March postings by Paul Kryscuk  
14 who's a co-defendant and sort of -- I believe even  
15 Magistrate Judge Gates characterized either -- it was  
16 either him or Collins would be seen, sort of, as the  
17 leaders of any kind of group that would be -- that my  
18 client was alleged to be associated with.

19 And I've highlighted portions of, sort of,  
20 this ideology here, or parts of it: that there's no way  
21 that this will be accomplished on a nationwide scale  
22 right off the bat; that it's not gonna happen overnight;  
23 eventual goal that may take generations of war to  
24 accomplish; again, qualifying things with statements of  
25 "when the time comes"; not advocating anyone to go out



1 and do something stupid that will change nothing; be  
2 patient, our time is coming; the system is killing  
3 itself organically, it will collapse sooner than later;  
4 when that happens, hit the streets; when the time comes;  
5 again, characterizing it as a generational struggle.

6 THE COURT: This is all from 2017? It was  
7 originally posted on Iron March?

8 MR. TARLTON: I believe -- yes, Your Honor.  
9 I'll go back to the...

10 THE COURT: Yeah, I've read the -- I've read  
11 the entire manifesto.

12 MR. TARLTON: Okay. Yes, Your Honor.

13 THE COURT: So to the extent that the  
14 highlighting is just highlighting the fact that these  
15 things are issues for the future, I understand --

16 MR. TARLTON: Okay. Yeah, that's absolutely  
17 the point.

18 I'm gonna put on the screen, Your Honor,  
19 Exhibit 3. And these numbers are matching up with what  
20 was submitted by Mr. Collins's counsel. Looks like the  
21 date of this was May 22nd of last year. Again, while  
22 they're analyzing Mr. Collins, you know, they're  
23 pointing out that they have not identified an imminent  
24 threat.

25 Your Honor, this is Exhibit 4, FBI

1 memorandum, and I think it includes excerpts from Iron  
2 March. This memorandum is dated -- or investigative  
3 report is dated July 2nd of last year, but these are  
4 posts from 2016 or so. And I think a point we made at  
5 the detention hearing in front of Magistrate Judge Gates  
6 is I don't believe there's any evidence my client even  
7 knew Mr. Collins when these posts were being made. In  
8 fact, I think Mr. Collins was pretty young, like 16  
9 years old. He went into the military at a young age. I  
10 think it was before this.

11 THE COURT: Right.

12 MR. TARLTON: The extent Your Honor's  
13 already seen the Iron March, that's all that is.

14 I'm putting on the screen, Your Honor,  
15 Exhibit 5. This is October 14th of last year, getting  
16 close to the arrest date; FBI investigative report that  
17 they had made decisions to arrest these gentlemen.

18 THE COURT: Can you scroll back up?

19 MR. TARLTON: Yes, Your Honor.

20 THE COURT: To the names.

21 MR. TARLTON: Yes, Your Honor.

22 THE COURT: Right there.

23 MR. TARLTON: Yes.

24 THE COURT: I'm not seeing -- he's living in  
25 Boise by this time?

1 MR. TARLTON: He is. Yes, Your Honor.

2 THE COURT: Okay. That's what I was trying  
3 to figure out.

4 MR. TARLTON: He had taken the job.

5 THE COURT: Thank you.

6 MR. TARLTON: I think this was the -- they  
7 thought that the conflict could be within the next five  
8 years.

9 And this, I think, reflects the  
10 investigator's thoughts that they should be arrested in  
11 October in light of uncertainties about the November  
12 election.

13 THE COURT: Okay.

14 MR. TARLTON: Putting on Exhibit 6, the  
15 interview of Michael Collins, co-defendant Liam Collins'  
16 father. And this was back in October -- so after -- or  
17 late October of last year.

18 I guess this is --

19 THE COURT: This is the brother?

20 MR. TARLTON: The brother -- right.

21 THE COURT: Okay.

22 MR. TARLTON: Your Honor, now I'm putting on  
23 the screen Exhibit 7. An individual, Maurino,  
24 investigated in connection with the other defendants in  
25 this case.

1 I'd just point out that this investigative  
2 report's from October 23rd of last year. I think  
3 Maurino talks about getting a gun part for Mr. Kryscuk  
4 in the case of a rainy day as basically -- he described  
5 it as a breakdown in civil order in the world and denied  
6 any knowledge of any plan, specific plan.

7 THE COURT: Okay.

8 MR. TARLTON: Putting on the screen, Your  
9 Honor, Exhibit 8. This is a report from November 2nd of  
10 last year with Mr. Kryscuk's wife who had made reports  
11 about him to the FBI which helped fuel this  
12 investigation.

13 THE COURT: Okay.

14 MR. TARLTON: Again, I think she reiterates  
15 the same thing, lack of a specific plan.

16 THE COURT: Okay.

17 MR. TARLTON: Your Honor, now I'm putting on  
18 the screen Exhibit 9. This is from November 4th of last  
19 year. I believe he's an individual that was -- might  
20 have obtained a firearm from Mr. Kryscuk. The  
21 highlighted portion shows this gentleman denying any  
22 specific plot.

23 Your Honor, I'm putting on the screen  
24 Exhibit 10. This is my client's former supervisor at  
25 his workplace.

1 THE COURT: Okay.

2 MR. TARLTON: This is Exhibit 11. Somebody  
3 that knew Paul -- Mr. Kryscuk. And my understanding,  
4 Mr. Collins's counsel made the point that Mr. Kryscuk  
5 sold firearms not just to white extremists.

6 THE COURT: Correct. I saw that he was half  
7 African American.

8 MR. TARLTON: Yes, Your Honor.

9 THE COURT: This purchaser.

10 MR. TARLTON: That's right.

11 THE COURT: Okay.

12 MR. TARLTON: Showing now, Your Honor,  
13 Exhibit 12. This is a FBI investigative report from  
14 September 3rd of 2020, last year. This is a workplace  
15 review that -- it's my client's middle name, Calhoun.  
16 My understand- -- the takeaway is that -- again,  
17 underscoring that -- no evidence that he used his  
18 position of employment to further anything involving  
19 these allegations.

20 Now I'm putting on the screen, Your Honor,  
21 Exhibit 13. This is an interview of my client's  
22 ex-girlfriend.

23 THE COURT: Okay.

24 MR. TARLTON: I think the takeaway is saying  
25 she never thought that they were actually plotting

1 violence, despite being very critical of him otherwise.

2 THE COURT: I get the gist of this.

3 MR. TARLTON: Yes, Your Honor.

4 Presenting on the screen now Exhibit 14.

5 This is from May -- an investigative report from May 26  
6 of last year; that they ruled him out of, I guess, or  
7 didn't have evidence of Mr. Kryscuk being a part of a --  
8 I guess, of a listed group.

9 Putting on the screen, Your Honor, Exhibit  
10 15, an investigative report, FBI report from October  
11 22nd of last year; I guess another person who grew up  
12 with Mr. Kryscuk who was interviewed.

13 That's the count of that, Your Honor.

14 THE COURT: All right.

15 MR. TARLTON: Putting on the screen now,  
16 Your Honor, Exhibit 16. Looks like this is from  
17 November 18th of last year, NCIS investigative report  
18 for an interview of a Lieutenant Corporal Womack.

19 THE COURT: It's probably Lance Corporal.

20 MR. TARLTON: Oh, Lance Corporal. Sorry.  
21 Lance Corporal, Your Honor.

22 Your Honor, now I'm putting on the screen  
23 Exhibit 17. This is another interview of Paul Kryscuk's  
24 wife, Melissa, back in -- October 27th of last year.

25 THE COURT: All right.

1                   MR. TARLTON: Your Honor, I'm putting on the  
2 screen Exhibit 18, last one, an interview back on  
3 November 13th of last year, NCIS interviewing -- looks  
4 like First Lieutenant Pamlyne. It's Mr. Kryscuk's  
5 cousin.

6                   THE COURT: Was there anything in particular  
7 you want me to take from Exhibit 18?

8                   MR. TARLTON: I thought that I had a  
9 highlight in there, Your Honor, but -- going back to his  
10 interview, he said he normally didn't take Mr. Kryscuk  
11 seriously with -- he said hateful, racist things, knew  
12 him well. I think that Mr. Kryscuk had made a ghost gun  
13 or, you know, something by that terminology but had  
14 never actually tried to get Mister -- his cousin to move  
15 out to Idaho with him.

16                  THE COURT: So the implication that he  
17 provides guns to folks who are not in the group as well?

18                  MR. TARLTON: Exactly. Yes, Your Honor.

19                  THE COURT: Thank you.

20                  MR. TARLTON: And then those -- those are  
21 the exhibits that were presented by Mr. Collins at his  
22 hearing, Your Honor.

23                  THE COURT: All right. They've been  
24 previously admitted into evidence at another hearing.  
25 I'm assuming you want them admitted in this one as well.

1 MR. TARLTON: Yes, Your Honor.

2 THE COURT: All right. They're all  
3 admitted.

4 MR. TARLTON: Thank you.

5 THE COURT: Anything further, Mr. Tarlton,  
6 in terms of new evidence?

7 MR. TARLTON: Not in terms of new evidence,  
8 Your Honor. And we would stand by also the transcripts  
9 that reflects the testimony of my client's father and  
10 description of the home and employment opportunities.

11 We also admitted some exhibits at our  
12 detention hearing in front of Judge Gates that showed my  
13 client has employment opportunity with an individual  
14 that runs an auction house.

15 THE COURT: That's the data entry position  
16 that was described by Judge Gates in his order?

17 MR. TARLTON: Yes, Your Honor.

18 THE COURT: Ms. Kocher, the government bears  
19 the burden of demonstrating by clear and convincing  
20 evidence danger to the community, or by a preponderance  
21 risk of flight. I'm happy to hear from you now.

22 MS. KOCHER: Thank you, Your Honor.

23 I would first begin with just a little bit  
24 of reference to those 18 exhibits that were just  
25 admitted. If you review each of them closely, Your



1 Honor, each of the exhibits contains information that  
2 would work against the defendant in this case as well.

3 The 2 May of 2020 exhibits that are from the  
4 FBI where no imminent threat was identified, the  
5 government would point out that this investigation had  
6 been pending for about six weeks at that time. The FBI  
7 had been involved about two weeks at that time. It has  
8 no bearing on the current imminent threat, even more so  
9 today than at the time of Mr. Duncan's original hearing.

10 As to the Kryscuk manifesto, the Defense  
11 Exhibit 2, it was, as Your Honor noted, written in 2017.  
12 It did appear to be a several-year plan. Several years  
13 have passed. And in an unusual -- to my experience --  
14 they kept with it. They actually carried out and moved  
15 forward in their plan. They moved to Boise. They were  
16 on that path. Collins had posted that he was going to  
17 join the Marines, that they would be able to teach him  
18 what he needed to know. That happened. In fact, they  
19 have a "Praise Collins Day" because of the number of  
20 recruits he brought into the group, Duncan among them,  
21 and other military members.

22 Duncan was specifically recruited because of  
23 his intel and communications specialty in the military.  
24 I'm sure you're familiar with that from the record.

25 Contrary to it confirming that there's no

1 imminent threat because of the reference to the future  
2 in that 2017 posting, in fact, the government would  
3 argue that it demonstrates their commitment to it, that  
4 it has lasted now -- we're going on four years, at  
5 least -- and they did take active steps, even more so,  
6 as I said, since that July training.

7           The video you watched, Government's Exhibit  
8 7 -- Exhibit 7, by the way, was a compilation that was  
9 found just like that on the electronic devices seized at  
10 the time of the arrest. But there were also a number of  
11 video clips and other photographs. This particular  
12 video was a compilation that they had created of those  
13 pieces.

14           Going to the July 20 memo that noted the  
15 2016 posts by Collins, I've referenced those. Those are  
16 where Collins lays out his intention to give four years  
17 to the cause, as it were, so that he can train. I would  
18 note at this point, too, that the evidence is replete  
19 with instances where military gear was stolen, body  
20 armor as well as less -- the PMAGs, or the polymer  
21 magazines that were used and shipped in bulk, literally,  
22 as well as tarps and sleeping bags and other items that  
23 wouldn't necessarily be able to be specifically tracked  
24 to a unit or person within the military.

25           The Michael Collins interview, Defense

1 Exhibit 6, I would note that his other son -- not Liam  
2 Collins but the other son he's referencing -- told the  
3 father that they had no plan for violence, that they  
4 just wanted to live off the grid. This is the same son  
5 who at the age of 16 was allowed to go to Boise for that  
6 live training. He's actually the individual that falls  
7 in that video, that you see fall at the one point. That  
8 is the younger brother -- and then flew by himself in  
9 September to San Antonio at Mr. Duncan's request and  
10 drove with Mr. Duncan when he moved to Boise.

11 Judge Gates, you know, specifically noted in  
12 regard to Mr. Collins' detention that all of this had  
13 been kept, apparently, from the Collins' father. And  
14 that interview only punches that side of that up.

15 I would note in regard to Exhibit 7 the  
16 interview of Joseph Maurino. Going back to Government's  
17 Exhibit 1 from this hearing, you might find a statement  
18 in there. I think it's in regard to that 600-page  
19 series where they're talking about an army. You'll see  
20 the phrase that they had "lost FF." And they discuss,  
21 yeah, but they're not gonna be able -- probably not get  
22 up to 50 but maybe a dozen. The timing of that is  
23 consistent with the argument that is pointed out in that  
24 interview that Maurino had with them. Maurino would be  
25 considered a founding father, potentially what is meant

1 by that "FF." So that only confirms that Maurino did  
2 have a following out, and it appears to follow that July  
3 training. He was present, and he is present in that  
4 video as well.

5 As to the interviews of Melissa Kryscuk  
6 presented in Exhibits 8 and Exhibit 17, note that those  
7 not necessarily highlighted for Your Honor here, but  
8 Melissa Kryscuk reports the presence of bomb parts in  
9 her home, which ultimately were found. And although she  
10 denies knowing any plan, that is to say Kryscuk having  
11 told her of any plan, Exhibit 17 specifically -- I  
12 believe it's going to be on page 61 of that exhibit --  
13 she specifically talks about overhearing Duncan and  
14 Collins talking in the backyard. My -- and I don't have  
15 those Collins exhibits with me. My recollection is that  
16 she's talking about the lights going out or the power  
17 grid aspect. And when Duncans [sic] and Collins  
18 realized she was there within earshot, they quickly  
19 changed the subject or stopped talking about it.

20 The Vilardi [phonetic] interview, he notes  
21 -- this is Defense Exhibit 9 -- that he did not want to  
22 be a part of what Kryscuk was doing. That's in that  
23 exhibit. I would just note for the Court that yet this  
24 defendant, Mr. Duncan, didn't have that same clarity as  
25 Mr. Vilardi and himself moved from San Antonio to Boise

1 with the assistance of a juvenile at that time.

2 The text in between -- and my note to myself  
3 as Exhibit 9 was being reviewed, there were two portions  
4 that were highlighted, and I would just draw you --  
5 review that exhibit before you make your decision. The  
6 text in between those two highlighted portions -- I  
7 think they had highlighted the first and the last parts  
8 of a paragraph. The information in between would be  
9 relevant and is contrary to the defendant's position.

10 I would note, Your Honor, that Vilardi, that  
11 interview also sets out that he used the name Pius on  
12 Wire. It is Vilardi that that meme of the masked  
13 individual standing in front of the power station  
14 saying, "Don't become good at taking down" -- that  
15 actually came from Vilardi.

16 THE COURT: So Vilardi posted the meme, but  
17 Vilardi -- that's not a photograph that was taken from  
18 Vilardi, but he posted the meme.

19 MS. KOCHER: Correct. They are resharing  
20 this -- I can't speak to whether or not it is Vilardi.  
21 But I do know that this Instagram account is resharing a  
22 post that had originally come from Vilardi.

23 The government -- referring to Defense  
24 Exhibit 11, the government has never maintained that the  
25 sales were only to white supremacists; in fact, the

1 opposite. They used and intended to use the sales of  
2 the arms both to finance their group as well as to arm  
3 their specific group.

4           The ex-girlfriend at Exhibit 13 noted that  
5 the group sounded "culty," that she was never allowed to  
6 touch his phone, she was never privy to any  
7 conversations he has. Most importantly, Your Honor, the  
8 end of that interview ends with: *She believed him*  
9 *capable of conducting violence toward black people*  
10 *before he was ever arrested.*

11           In short, it's easy to pull a several-page  
12 interview and pull out the phrases that go to either  
13 side, as can be seen by what I'm now doing.

14           In regard to Exhibit 16, Lance Corporal  
15 Womack, he had obtained an AR-15 and a suppressor from  
16 this group. He had been asked by Collins to obtain 50  
17 pounds of Tannerite, which is an explosive material sold  
18 mostly to gun enthusiasts as a target that would explode  
19 when it's shot. And it's used in small amounts. There  
20 were -- the vast library of explosive information found  
21 on Mr. Duncan's hard drive -- and I have said it in the  
22 prior hearing as well -- there was information about  
23 nerve toxins and poisonous gases and IEDs and remote  
24 detonators and -- and again, "library" is an appropriate  
25 term to use.

1           There was also research and information on  
2   the component of Tannerite that could be used and  
3   combined -- basically, the component that was in the  
4   bomb used in Oklahoma City. Is it ammonia?

5           THE COURT: Ammonium nitrate.

6           MS. KOCHER: Ammonia nitrate. Yes, sir.  
7   And that was one of the topics that they did talk about,  
8   that the group did talk about, was Oklahoma City.

9           Lance Corporal Womack talked about having  
10   been vetted on a phone call. Duncan was present on that  
11   phone call, and our other information suggests that that  
12   was a significant role that Duncan played. In fact, he  
13   had material indicating in the recruitment of others,  
14   find out what their viewpoints are, what their religion  
15   is, what their background is, and then explain what  
16   reading material you could give them that would match  
17   that most closely, to try -- I think a phrase that had  
18   been shown in one of the defense exhibits -- oh. I  
19   think it's the Kryscuk manifesto, actually, where  
20   Kryscuk says to start radicalizing incrementally. This  
21   is grooming that we see in human trafficking. We see  
22   grooming in many aspects. And this -- they had their  
23   own grooming mechanisms, so much so that it was written  
24   down as to what written material to give whoever in this  
25   regard.

1           I would note -- turning to Defense Exhibit  
2 17, it is the second of the Melissa Kryscuk interview --  
3 that in that interview, the task force officer who was  
4 interviewing her tells her about Kryscuk surveilling the  
5 Black Lives Matters, how he would pull his car up from a  
6 certain viewpoint and then move it. And her response  
7 was very simple: *That's frightening.* And I think that  
8 encapsulates, essentially, the position we find  
9 ourselves in today. It may have been a future plan. It  
10 became to where it was imminent.

11           In regard to the Pamlyne interview at  
12 Defense Exhibit 18, I would only note that he explains  
13 that Mr. Kryscuk told him that the significance of the  
14 ghost guns was that the government won't know you have  
15 them. I would also note that Mr. Pamlyne, or Captain  
16 Pamlyne, rather, described Kryscuk as having these  
17 ideas that minorities needed to die, that they were not  
18 human. I would also note that Kryscuk -- in that  
19 interview, Kryscuk told Pamlyne to "Get here," which  
20 would be to Boise, which was their ultimate location.

21           Your Honor, this particular defendant had  
22 many acts. It's not even about free speech. He did  
23 things and he received and sent monies back and forth  
24 both in support of the firearm conspiracy with which  
25 he's charged as well as indicating his sincere intent



1 and involvement in the conspiracy, to the extent that it  
2 was to finance the group and to arm the group for a  
3 potential civil disorder. The evidence that was  
4 presented before Judge Gates, slightly enlarged here,  
5 just with the note that his ideal world that would make  
6 his co-conspirator "coom" is if Trump loses the election  
7 and then refuses the results. And while I'm not holding  
8 these and don't attempt to hold these defendants  
9 accountable for the breach of the Capitol last week,  
10 this is very likely the exact trigger that these  
11 defendants were waiting on, and it --

12 THE COURT: Counsel, what's your best  
13 argument for why post-arrest he now poses an imminent  
14 threat of danger to the community? Not prearrest, but  
15 post-arrest now he poses an imminent threat of danger to  
16 the community or risk of flight?

17 MS. KOCHER: Because there are  
18 co-conspirators who have not been arrested who are still  
19 out in the community. He has access to them. He --  
20 Mr. Duncan testified that this defendant didn't have  
21 much money and they were taking care of his finances on  
22 cross-exam and in argument and ultimately found by the  
23 Court. There is no truth between this defendant and his  
24 father, at least not on this defendant's side. And  
25 there is no way to know what resources this defendant

1 has, particularly with the community -- and by  
2 "community," his co-conspirators as well as like-minded  
3 individuals, if you will -- would share resources even  
4 through Go Fund Me pages. And the likelihood that he  
5 could garner support for flight and for ongoing action  
6 is significant and meets that clear and convincing  
7 burden in regard to danger and, the government asserts,  
8 preponderance as well.

9 I would note the preparation of these  
10 defendants, Your Honor, is significant and goes toward  
11 the future dangerousness and risk of flight that you  
12 talk about. They have the capability, the knowledge,  
13 the skills, and the research completed for the -- they  
14 prethought -- everybody had a fake ID. They prethought,  
15 "This is what's gonna happen when our cell phones are  
16 searched, so let's do these things to protect them."  
17 They prethought -- the only window the government has  
18 had are the Iron March posts, which were ultimately made  
19 public back in 2019, which is, as you've heard today, is  
20 what kicked off the investigation. Their screen shots  
21 of their Wire chats -- Wire has been completely  
22 encrypted, but some of the things like -- it was an  
23 exhibit in the Collins hearing. Mr. Kryscuk had put out  
24 the four rules for the group, which was "Snitches end in  
25 ditches" -- right.

1                   THE COURT: Yeah. That was before Judge  
2 Gates as well.

3                   MS. KOCHER: Yes. Thank you. So that is a  
4 screen shot of their Wire chat. So a lot of our  
5 information comes because they were keeping photos of  
6 the stuff, presumably, that's more important to them or  
7 that they want to have reference to as time goes on,  
8 Wire being an app that deletes itself when a time is  
9 set.

10                   It's not come up in this hearing, and I do  
11 apologize that the Duncan and Collins hearings converge  
12 in my memory. One significant event that occurred,  
13 again going to their preparation and the government's  
14 difficulty in getting the actual words that they were  
15 using -- literally, the arrests had been planned for  
16 October 20th. My recollection is that's a Tuesday. The  
17 Friday preceding, a member of their group who was a  
18 police officer in Indiana was outed. An online petition  
19 circulated on that Friday seeking his dismissal from his  
20 job from the Indiana Police Department. That hit the  
21 mainstream news. He was then called in -- that police  
22 officer was then called in and dismissed from the force,  
23 I believe, that Saturday.

24                   Texts were recovered between Mr. Duncan and  
25 that individual, which I can say that individual viewed

1 as a threat on him. Mr. Duncan strongly requested the  
2 individual to come out to Boise. He explained: *I'm*  
3 *going to visit somebody in Florida.*

4 When that all was transpiring, we know  
5 through other interviews -- Womack, for instance -- that  
6 all the members of the group were directed to delete  
7 their Wire accounts entirely. So even through the  
8 process of arrest and talking with someone like Womack,  
9 we would have had access to the Wire account. It had  
10 been deleted literally within four days just prior to  
11 their arrest.

12 That goes again to the preparation, to their  
13 ability to hide their operational security. That will  
14 continue on post-arrest. We will have no ability,  
15 particularly with this defendant's knowledge of a  
16 foreign language, with his knowledge of intel and  
17 communications. He's trained by the military for these.  
18 It is a significant risk, Your Honor.

19 Finally, Mr. Duncan would be a risk to those  
20 persons who have cooperated with the government, or who  
21 have at least spoken -- "cooperation" may be a big  
22 word -- but who have agreed to speak and have provided  
23 information as have even come out in this hearing today,  
24 Corporal Womack included. And those members' safety is  
25 of large concern to the government as well.

1 THE COURT: Mr. Tarlton.

2 MR. TARLTON: Thank you, Your Honor.

3 Your Honor, the government now argues that  
4 there is an imminent threat. Your Honor, as to the  
5 point in question -- and I think about what evidence  
6 they have of after his arrest, now that they're trying  
7 to say my client is an imminent threat in light of, for  
8 example, what happened at the Capitol last week. But  
9 after his arrest, what evidence do they have of -- under  
10 the principles of Brandenburg and Hess v. Indiana and  
11 NAACP v. Claiborne that he is engaged in advocacy  
12 directed towards producing imminent lawlessness or  
13 violence and a likelihood of that occurring? I would  
14 submit Your Honor is well aware he's been living in a  
15 veritable fish bowl with federal oversight since  
16 October.

17 He was arrested in Idaho. He's been  
18 incarcerated up there. He was ultimately transferred  
19 down here. And we finally had a detention hearing in  
20 December, and here we are in January. And they produced  
21 in discovery -- they've monitored his phone calls and  
22 everything else, and there's no evidence at all that  
23 he's engaging in speech that is directed at anything  
24 that is about to occur.

25 And so you know, Your Honor, when we take a

1 step back -- and I don't think you can take words or  
2 expressive conduct from before his arrest and then --  
3 where there was nothing imminent at the time, and then  
4 take events months later and then bootstrap it together  
5 to create what the law at least recognizes as the kind  
6 of imminency that strips away speech and expressive  
7 conduct from First Amendment protection.

8 THE COURT: Counsel, I understand a lot of  
9 these arguments are directed to the substance of the  
10 charge and whether or not the conspiracy has advanced to  
11 the point where you think there's sufficient imminence  
12 for the conspiracy charge to hold. And I'm familiar  
13 with the law. I'm familiar with the First Amendment  
14 law. But the question before the Court today is current  
15 danger to the community and current risk of flight,  
16 and --

17 MR. TARLTON: Yes.

18 THE COURT: -- it will be most helpful to  
19 focus on that because --

20 MR. TARLTON: Yes.

21 THE COURT: -- that's the question I'm gonna  
22 be answering.

23 MR. TARLTON: Absolutely.

24 Currently, as we stand here today, there is  
25 no evidence that since his arrest this is a man so out

1 of control he is continue- -- or he's allegedly  
2 continuing to engage in directing anybody on the outside  
3 or the inside to do anything violent; that this federal  
4 intervention is showing -- kind of, in a sense, is  
5 undermining the government's case as to dangerousness.  
6 If he's the person that -- truly at his core that  
7 counsel for the government made him out to be, we would  
8 have seen some signs of that between now and -- between  
9 his arrest and today. When they're asking to detain on  
10 dangerousness, they're asking Your Honor to engage in,  
11 you know, engage in a process of what might happen in  
12 the future. And dangerousness normally is with people  
13 that really lack volitional control. And they are not  
14 presenting that to Your Honor.

15 And then I'd say flight risk, we really  
16 didn't hear anything from the government today on flight  
17 risk. My understanding at the original detention  
18 hearing, it was sort of this idea based on he had  
19 training in Russian when he was in the Marine Corps.  
20 That's about -- and he's not actually from North  
21 Carolina. Well, the case itself has an attenuating  
22 connection with North Carolina. There was an isolated  
23 sale by a co-defendant, allegedly, on Camp Lejeune.

24 He would be living in Pennsylvania with his  
25 parents where he'd have a job. He doesn't have any real

1 assets. His dad talked about he's not -- he's, I think,  
2 only 26 years old. He's not developed a lot of  
3 financial discipline, still owes money on a car, you  
4 know, older car. There's just no means to flee.  
5 There's no bank accounts or any evidence of that  
6 overseas. There's no family members or close friends  
7 overseas. There's nothing indicating a plan to flee the  
8 United States.

9           And so as to flight risk, Your Honor, they  
10 haven't met their burden on either preponderance of the  
11 evidence or clear and convincing. It's just not  
12 realistic. And then when you look at the nature of what  
13 he's actually charged with, one count of conspiracy, it  
14 has a five-year statutory maximum punishment, Your  
15 Honor. That's just not something that he's facing here  
16 today that he's going to abandon all of his ties in the  
17 United States, with no money, to go on the lam in places  
18 that don't have extradition. That's just not realistic  
19 over what he's facing and his actual -- the reality of  
20 his situation. And in light of potential defenses that  
21 he can raise that are not just on the substantive  
22 charges, just on the facts about his attenuation to any  
23 gun sale or -- or, you know, a conspiracy to engage in a  
24 civil disorder, with their own evidence shows that there  
25 was nothing at the time imminent. That's under the



1 Civil Disorders Act, that's -- imminency is effectively  
2 an element of the Civil Disorders Act.

3 So he's got factual defenses. He has  
4 constitutional defenses. This is a presumption of  
5 release case under Stack v. Boyle and the Bail Reform  
6 Act. It's not a presumption of detention.

7 He -- again, no evidence of the kinds of  
8 things you would see that would show actual propensity  
9 and ability to flee. He would be supervised in  
10 Pennsylvania where there's obviously a United States  
11 Probation Office along with his parents providing -- who  
12 are, you know, credible, law-abiding people who will  
13 provide oversight and eyes and ears for the Court and  
14 probation.

15 And so it really does come down to  
16 dangerousness. And I think absolutely they lack that  
17 sort of evidence of no volitional control that would --  
18 and the past is prologue. There's no criminal history  
19 here. There's no criminal convictions. There's no  
20 history of missing court, no history of convictions  
21 showing, you know, a total lack of respect for the court  
22 system and its court dates and hearing dates and  
23 anything like that that we see in other detention cases.

24 And so under the -- Your Honor's ultimate  
25 goal of weighing all of the factors under the Bail

1 Reform Act, you know, our position as we've outlined in  
2 our memorandum is that they just have not met their  
3 burden, Your Honor.

4 THE COURT: Ms. Kocher, I'll give you the  
5 last word.

6 MS. KOCHER: Thank you, Your Honor. I  
7 believe at the outset I intended -- if I didn't complete  
8 the sentence -- to incorporate the government's evidence  
9 and arguments from the prior hearing and --

10 THE COURT: That's the Court's  
11 understanding, that both parties --

12 MR. TARLTON: Yes.

13 THE COURT: -- are incorporating their prior  
14 arguments.

15 MS. KOCHER: All right. Thank you --

16 MR. TARLTON: Yes, Your Honor.

17 MS. KOCHER: -- Your Honor, because I do  
18 just -- given the comment there, I just wanted to make  
19 sure that was true.

20 I would respond with the statement that the  
21 government has failed -- or that most danger is shown by  
22 a lack of volitional control. I don't know if that's  
23 accurate. I don't know if that's true. What I do  
24 believe and what the government's position is in this  
25 case, it's the exact opposite. The government's case is

1     that this defendant in particular is smart. His  
2     knowledge of operational security is significant. There  
3     is more danger presented by this defendant who has been  
4     able to hide his activities, his belief, his -- from his  
5     job. He's kept his top security clearance, his top  
6     secret clearance, Your Honor, up until the day of his  
7     arrest, despite having just filled out a new SF-86 in  
8     January of 2020 denying any association with these types  
9     of groups. That is the crux of the government's risk of  
10    flight and danger as we go forward, is that it is not a  
11    lack of volitional control; it's the opposite.

12                 As to the imminency, Your Honor, the  
13    government has always argued that there is danger. And  
14    I believe in my evidence presentation this morning, my  
15    point about Judge Gates in the Collins hearing -- I  
16    didn't realize it was gonna come in quite so much -- is  
17    that the imminency is we don't know what the trigger for  
18    these defendants is. That makes it imminent. It's not  
19    when -- you know, they've not said that it's 2028.  
20    They've said it's this list of ideas, all of which are  
21    currently present. The Black Lives Matter protests were  
22    one. That was the first thing they got excited about.  
23    The COVID and taking out a higher rate of minorities  
24    than whites is part of it. That's actually on -- that's  
25    in a Collins exhibit on video during the gun exchange --

1 during the exchange of money for one of the guns that  
2 the government purchased from Collins. He, you know, is  
3 pleased to have COVID around to do part of their job.

4 We've got George Floyd and that entire  
5 thing, and that's where the Instagram thing we viewed in  
6 Government's Exhibit 1 today came forth.

7 The fact that this defendant has been  
8 trained, has utilized that training -- you don't hear it  
9 on the video compilation played in Government's Exhibit  
10 7, but the other video clips from that training is the  
11 calling off of the military commands. It is definitely  
12 a military preparation that's happening on that field as  
13 they're firing those weapons. Duncan himself is shown  
14 in that possessing one of those short-barrel rifles in  
15 that video.

16 The government believes that it has met its  
17 burden both under preponderance for flight and clear and  
18 convincing evidence for ongoing danger and that this  
19 defendant should be retained in custody until trial.

20 THE COURT: I have the evidence before me.  
21 I'm gonna try and take some time to review some of it  
22 before I come to a final conclusion. I understand the  
23 arguments. I'm gonna take a 20-minute recess. We'll  
24 come back at five minutes to noon, and I'll tell you  
25 where I am at that point.

1 (Proceedings recessed at 11:35 a.m.)

2 (Proceedings recommenced at 11:52 a.m.)

3 THE COURT: All right. Back on the record  
4 in the case of United States of America versus Jordan  
5 Duncan. This case involves an appeal pursuant to Title  
6 18, United States Code, Section 3145(b) seeking an order  
7 revoking the magistrate judge's order of detention.

8 I'm not gonna revoke the order of detention  
9 at this time. I think this is a very close case, and  
10 it's one where I'm gonna order that the probation office  
11 in Pennsylvania conduct a home inspection so that we can  
12 determine what precisely the conditions might be in  
13 Pennsylvania where the defendant might reside, and to  
14 the extent -- and I want a report from the probation  
15 office on the feasibility of electronic monitoring and  
16 house arrest there.

17 This is a -- the defendant has a presumption  
18 of release in this case. It's not a presumption of  
19 detention. I understand Judge Gates's order and take  
20 his findings seriously. The Court needs additional  
21 information to determine whether or not it might be able  
22 to fashion conditions of release. So I'm gonna order  
23 that we have that finding made by Wednesday so that the  
24 parties can receive a report and we'll have a -- we'll  
25 continue this hearing until Thursday for a final

1 determination pursuant to 3145.

2 At that time, in the event that any new  
3 information has come to light by either party, I will  
4 consider that information at that time. What we're  
5 essentially gonna do is leave Judge Gates's order in  
6 place and continue it until such time as the Court has  
7 sufficient information from Pennsylvania to determine  
8 whether or not conditions can be fashioned in this case.

9 Any questions from either party?

10 MS. KOCHER: Not for the government, Your  
11 Honor.

12 MR. TARLTON: Not from the defense, Your  
13 Honor. I have given probation again the full contact  
14 information for my client's father and address and  
15 everything. We'll work with them on helping them do  
16 what they need to do, Your Honor.

17 THE COURT: Okay.

18 All right, counsel. Thank you for all the  
19 hard work that's clearly gone into this case from both  
20 sides. As I said, this is one where the legal  
21 presumption is strong, and this defendant's personal  
22 criminal record is nonexistent. So this is one where  
23 the presumption is gonna be important. I'll need to  
24 know more. Thank you.

25 (Proceedings concluded at 11:54 a.m.)

**C E R T I F I C A T E**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Risa A. Kramer

2/7/2024

Risa A. Kramer, RMR, CRR

Date